FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6302 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	: Coram, : : : :	Court's or Judge's Orders .

Mr. N. J. Patil for petitioner

CORAM: SMT. RANJANA DESAI, J.
26/9/2005

P.C.:-

By the impugned order dated 19/7/05 passed by the II Joint Civil Judge, Junior Division, Sangli has appointed D.I.L.R. Sangli as court commissioner to take measurement of the suit property. The application Ex. 50 is filed by the plaintiff.

2. I have heard the learned counsel for the petitioner original defendant. He has drawn my attention to an earlier application filed by the plaintiff for appointment of court commissioner. He has also drawn my

attention to the order passed thereon whereby the application was dismissed, by holding that the plaintiffs have not shown that the commissionner is a must for elucidating any matter in dispute and that it is for the plaintiff to establish his case.

3. The learned counsel for the petitioner submitted that, if the application for appointment of commissioner was rejected it was not open to the court to entertain fresh application. Such an application is not maintainable. He submitted that appointment of commissioner cannot be made for collecting evidence.

4. It is true that earlier application praying for appointment of commissioner has been dismissed. This fact has been averrred in the instant application. It is stated that though the earlier application was rejected, in the interest of justice and in order to bring the correct fact situation before the court, the commissioner may be appointed.

Knowing this fact the learned Judge has appointed the commissioner.

5. In my opinion, the impugned order does not suffer from any patent illegallity or perversity calling for interference with it in writ jurisdiction Appointment of commissioner would cause no prejudice to the defendant because all that the commissioner would do is to bring the correct measurement of the suit property and the situation thereof on record. This would not amount to collecting evidence. Besides commissioner’s report is not final and it can always be challenged by the defendant. Hence the order merits no interference. Petition is rejected.